Good Advice

I Don't Need a Will!

By Susan J. Brotman, The Lawyer Who Listens™

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Many people think that if they don't have a lot of assets, they don't need a Will. Also, many people think that if they're married, the surviving spouse automatically inherits all. NO! NO! NO!

Death Without A Will: Intestate Succession.

If someone dies with very little in their name alone, doesn't it make sense that the assets should go to who he/she chooses, not to people the State of Florida designates? A little money may be a life changer to someone who has very little of their own, so why let the State give your assets to a long lost relative that you don't remember or to someone you hate!

Without a Will, the State of Florida says who the beneficiaries are. Such is called "intestate succession." It doesn't matter if a couple was married 1 year or 50 years, if the deceased spouse had children, that's the critical factor. If a spouse had children from a prior marriage or relationship, the surviving spouse only gets 50% of the assets and the children share the other 50%. If a couple was together for many years but not legally married, the surviving partner has no entitlement unless provided for in a Will. There is no such thing as common law marriage in Florida. Likewise, if a married couple was separated when one party died, it wouldn't make a difference if the deceased party had a new partner, no matter how long the new couple was together, the separated surviving spouse would still be the deemed as the beneficiary.

A strange variation of this is that if the deceased spouse and the surviving spouse had children and if the surviving spouse also had children who were not children of the deceased spouse, the spouse gets 50%, and even if the surviving spouses' children never had anything to do with the deceased stepparent, all of the children share 50%.

Another unintended consequence of not having a will is that if one of the State designated beneficiaries hasn't been heard from in years and his whereabouts are unknown, his share doesn't go to the other beneficiaries, but may go to the State of Florida, instead.

Homestead Problems If No Will: There are additional restrictions in the Florida Constitution that limit who a person may give one's primary residence to (and that will be the subject of a future article). If married, a primary residence cannot be sold or otherwise transferred or mortgaged unless the spouse agrees and signs the deed of conveyance. If a married individual dies without a Will, but with a surviving spouse and a minor child, the homestead property goes by operation of law to the spouse. If there is a surviving spouse and other children, the spouse gets the property for his/her lifetime, but upon death, it then automatically goes to the deceased spouse's children (often many years later). This often created a situation in which the surviving spouse couldn't sell or mortgage the property (even if he/she couldn't afford the costs of maintaining the home), without the consent of the deceased spouse's children, and the children couldn't force the spouse (often a stepparent) to move out or sell the property. Due to the changing society, this the law has been changed to allow the surviving spouse to elect to sell the property and keep 50% of the proceeds, and the children would get the balance immediately. This avoids unwanted partnerships in home ownership.

With a Will, there are still restrictions on who a person's homestead can be left to, but such is usually dealt with when a will is being drafted. A Will can prevent an estranged child, sibling, or other relative from inheriting, and it can protect a spouse from being forced into an unwanted partnership with stepchildren.

Don't be afraid of doing a Will—you have worked hard, don't you want your assets to go to people of your choice, and not to those designated by the State! **stb**